

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

NANCY ANN ASHENHURST-GALLINA,
et al.,

Plaintiffs,

v.

Case Number 08-11464-BC
Honorable Thomas L. Ludington

JAMES A. KANDREVAS, *et al.*,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING
PLAINTIFFS' PETITION TO SET ASIDE JUDGMENT**

On April 4, 2008, Plaintiffs filed a complaint alleging that Defendants infringed on Plaintiffs' constitutional and civil rights by not providing a fair and impartial trial by jury. On June 19, 2008, District Judge Sean F. Cox rejected a report and recommendation to dismiss the complaint for failure to state a claim upon which relief could be granted and other deficiencies. Dkt. # 10. Rather, the order directed Plaintiffs to amend the complaint. On June 24, 2008, certain Plaintiffs filed an amended complaint. On July 29, 2008, Plaintiff Nancy Ann Ashenhurst-Gallina ("Plaintiff") filed a pleading under the title of "amended request for three judge court," which appears to be an effort at an amended complaint. Dkt. # 17.

On August 19, 2008, Judge Cox dismissed Plaintiffs' complaint with prejudice because it did not "properly identify Defendants" or their addresses, demonstrate the "exhaustion of state court remedies," establish why certain defendants were not absolutely immune for acting in a prosecutorial or judicial role, or "make sufficient allegations of claims against certain Defendants." Dkt. # 28 at 1. These were the same deficiencies raised in the June 19, 2008 Order. *See* dkt. # 10. While Judge Cox noted the fact of the amended complaint of June 24, it does not appear that

Plaintiff's amended complaint was considered. *Id.*

On August 26, 2008, Plaintiff filed a petition to "set aside void judgment," which the Court construed as a motion for relief from a judgment pursuant to Fed. R. Civ. P. 60(b) and referred to Magistrate Judge Charles E. Binder for report and recommendation. On April 16, 2009, Judge Binder issued a report and recommendation that the motion be denied after considering Plaintiff's amended complaint. The magistrate judge concluded that Plaintiff had not remedied the deficiencies highlighted by Judge Cox and was not entitled to relief from judgment pursuant to Fed. R. Civ. P. 60(b). Dkt. # 39 at 5-6.

Plaintiff has not filed an objection to the report and recommendation, but appears to have filed a pleading entitled "Notice! This Notice And Demand To Strike Is Brought By Plaintiff Under Jurisdiction Of American Flag. Title 4 U.S.C. Section 1 & 2 Plaintiff, At All Times Relevant, Claims Unalienable And Substantive Rights, Waiving None." Dkt. # 41. While the Court is mindful to liberally construe pro se pleadings, *see Haines v. Kerner*, 404 U.S. 519 (1972), the pleading contains no discernable objection to the magistrate judge's conclusion. It does not refer to the petition to set aside judgment or the report and recommendation. Rather, it disputes the jurisdiction the district and magistrate judges that have presided over this case and alleges each is a "trespasser" and "tortfeaser." It further requests "thirty-three thousand (33,000) one once gold American Eagles per each Trespasser for collusion or conspiracy, abuse of office, causing malicious prosecution, abuse of process, falsification of Record, usurpation of judicial powers, libel, deceit, interference with Rights, disenfranchisement and conspiracy to cause deprivation" *Id.* at 8. The Court is unable to find any discernable objection in this pleading. Notwithstanding that conclusion, the Court agrees with the magistrate judge's reasoning and will adopt the report and

recommendation.

Accordingly, it is **ORDERED** that the report and recommendation [Dkt. # 39] is **ADOPTED**.

It is further **ORDERED** Plaintiffs' petition to set aside judgment [Dkt. # 37] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: May 19, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 19, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS